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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/567,844	02/10/2006	Manfred Kieser	MERCK-3135	7151

23599 7590 08/23/2007  
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ARLINGTON, VA 22201

EXAMINER
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NILAND, PATRICK DENNIS

ART UNIT	PAPER NUMBER
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1714

MAIL DATE	DELIVERY MODE
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08/23/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/567,844

Applicant(s)

KIESER ET AL.

Examiner

Patrick D. Niland

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 4 and 7-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, and 7-17 is/are rejected.
- 7) ☒ Claim(s) 11-15 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                 | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____  |

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1. The amendment of 6/11/07 has been entered. Claims 1, 4, and 7-17 are pending.

2. Claims 1, 4, and 7-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

A. The instant claims recite that the "at least partially polar carrier material" is "an at least partially polar comonomer". There is not basis in the originally filed specification for the "at least partially polar carrier material" being "an at least partially polar comonomer". This new limitation is therefore new matter.

3. Claims 7-8 and 11-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. The instant claims 7-8 depend from claim 1 and recite "the copolymer". There is not basis in any of the claims nor the claims from which they depend for "the copolymer". It is therefore unclear if this copolymer is to be an additional ingredient or is substituted for one of the other prior mentioned ingredients. The lack of antecedent basis therefore makes the claims unclear.

B. The instant claims 11-15 depend from claim 1 and recite "wherein the at least partially polar carrier material is a partially polar copolymer". Dependent claims are required by rule to further limit the claims from which they depend. It is unclear how this limitation further limits the claim from which claims 11-15 ultimately depend because claim 1 requires the at least

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partially polar carrier material to be a comonomer and the instant claims 11-15 change the at least polar material to copolymer rather than limiting comonomers. It is also further unclear if these claims still require the comonomer of claim 1 and the copolymers recited or if the copolymer is to replace the comonomer. The scope of the claims is also unclear due to the claim dependency therefore.

4. Claims 11-15 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form.

A. The instant claims 11-15 depend from claim 1 and recite "wherein the at least partially polar carrier material is a partially polar copolymer". Dependent claims are required by rule to further limit the claims from which they depend. Claims 11-15 do not further limit the claims from which claims 11-15 ultimately depend because claim 1 requires the at least partially polar carrier material to be a comonomer and the instant claims 11-15 change the at least polar material to copolymer rather than limiting comonomers.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 4, and 7-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Canadian Patent No. 2037603 Findley in combination with US Pat. No. 6451102 Hilder et al..

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Findley discloses the instantly claimed inventions at the abstract which discloses pigment compositions of up to 90 wt. % pigment and carrier which can be ethylene vinyl acetate copolymer (page 4, lines 4-7), which falls within the scope of the at least partially polar carrier of the instant claims 1, 4, 7, 8, and 11-14 and contains comonomer necessarily by definition of "degree of polymerization" which is never 100%, in small pellets (page 1, lines 21-24) which fall within the scope of powdered form of the instant claim 17. The pellet melting point implies that of the instant claim 4. It can be generally seen that the carrier can be the same as or similar to the resin to be pigmented from page 2, lines 11-12. The stearamide wax falls within the scope of the additive and auxiliaries of claims 10 and 15 as do the items of page 6, lines 17-27. See particularly page 3, lines 12-20; and the entire document. Findley does not disclose the instantly claimed flake form effect pigments.

It would have been obvious to one of ordinary skill in the art at the time of the instantly claimed invention to use the instantly claimed flake form effect pigments as the pigments of Findley because they are well known for use in master batches as shown by Hilder (the entire disclosure), would have been expected to give their well known pigmenting effects to the final pigmented product, would have been expected to benefit from the color concentrate of Findley just as the pigments of Findley do, including undergoing less degradation because the lower processing temperatures are expected to degrade the pigments less particularly due to the friability of the resulting pellets (page 2, lines 19-34 and page 3, lines 1-10) and will mix with the final resin better as taught by Findley, and will give the compatibility improvements taught by Findley. Adding the color concentrate to the final polymer is the process of the instant claim 16.

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7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patrick D. Niland whose telephone number is 571-272-1121. The examiner can normally be reached on Monday to Thursday from 10 to 5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

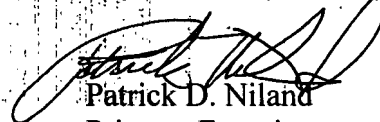
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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Patrick D. Niland  
Primary Examiner  
Art Unit 1714